

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/207, 161 12/07/98 HILLMAN

J PF-0208US

HM12/1204

EXAMINER

LEGAL DEPARTMENT
INCYTE PHARMACEUTICALS INC
3174 PORTER DRIVE
PALO ALTO CA 94304

CARLSON, K

ART UNIT	PAPER NUMBER
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1653 17

DATE MAILED:

12/04/00

Please find below and/or attached an Office communication concerning this application or proceeding.

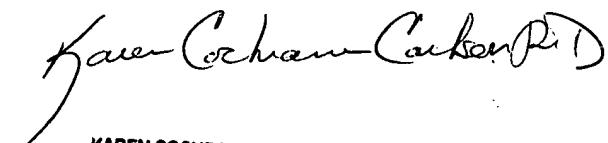
Commissioner of Patents and Trademarks

Advisory Action	Application No.	Applicant(s)	
	09/207,161	HILLMAN ET AL.	
	Examiner Karen Cochrane Carlson, Ph.D.	Art Unit 1653	
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --			
<p>THE REPLY FILED November 24, 2000 (Paper #16) FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may <u>only</u> be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p>			
PERIOD FOR REPLY [check only a) or b)]			
<p>a) <input type="checkbox"/> The period for reply expires _____ months from the mailing date of the final rejection.</p> <p>b) <input checked="" type="checkbox"/> In view of the early submission of the proposed reply (within two months as set forth in MPEP § 707.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p>			
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
<p>1. <input type="checkbox"/> A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37CFR 1.191(d)), to avoid dismissal of the appeal.</p> <p>2. <input type="checkbox"/> The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.</p> <p>3. <input checked="" type="checkbox"/> The proposed amendment(s) will not be entered because:</p> <p>(a) <input checked="" type="checkbox"/> they raise new issues that would require further consideration and/or search. (see NOTE below);</p> <p>(b) <input type="checkbox"/> they raise the issue of new matter. (see Note below);</p> <p>(c) <input checked="" type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input checked="" type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims.</p>			
<p>NOTE: <u>See Continuation Sheet</u>.</p>			
<p>4. <input checked="" type="checkbox"/> Applicant's reply has overcome the following rejection(s): <u>See Continuation Sheet</u>.</p> <p>5. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>6. <input checked="" type="checkbox"/> The a)<input type="checkbox"/> affidavit, b)<input type="checkbox"/> exhibit, or c)<input checked="" type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u>.</p> <p>7. <input type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</p> <p>8. <input checked="" type="checkbox"/> For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):</p> <p>Claim(s) allowed: _____.</p> <p>Claim(s) objected to: _____.</p> <p>Claim(s) rejected: <u>1 and 11</u>.</p> <p>Claim(s) withdrawn from consideration: <u>12-20</u>.</p>			
<p>9. <input type="checkbox"/> The proposed drawing correction filed on _____ a)<input type="checkbox"/> has b)<input type="checkbox"/> has not been approved by the Examiner.</p> <p>10. <input type="checkbox"/> Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.</p> <p>11. <input type="checkbox"/> Other:</p>			

Continuation of 3. NOTE: The recitation of "15 amino acids" would have to be addressed, the new claims would have to be rejected.

Continuation of 4. Applicant's reply has overcome the following rejection(s): if entered, the rejection under 35 USC 102(a) would have been overcome..

Continuation of 6. does NOT place the application in condition for allowance because: Applicants have not provided any new arguments against the rejections under 35 USC 101 and 112, as Applicants admit on page 4, para. 3. Applicants note that the Examiner has not addressed Applicants legal arguments regarding the guidelines is correct. It is not the Examiner's place to criticize the guidelines, but rather to support the guidelines provided as being consonant with the statutes. These legal arguments should be brought before the Commissioner, and are not on point regarding the rejection sat hand. .



KAREN COCHRANE CARLSON, PH.D
PRIMARY EXAMINER